

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

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| LAWRENCE LOMBARDI, | : |
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| | : |
| Plaintiff | : |
| | : |
| | : |
| v. | : |
| | CIVIL NO. 4:CV-05-300 |
| | : |
| | : |
| MICHAEL PUGH, ET AL., | : |
| | : |
| Defendant | : |
| | (Judge McClure) |

ORDER

December 11, 2006

Background

This *pro se* civil rights action was initiated by Lawrence Lombardi (“Plaintiff”), an inmate presently confined at the United States Penitentiary, Lewisburg, Pennsylvania. By Memorandum and Order dated January 17, 2006, Defendant Lawrence Schiffman, D.O.’s motion to dismiss was granted. On March 8, 2006, the Federal Defendants’ summary judgment motion was granted in part.

On March 28, 2006, the remaining Federal Defendants filed an answer to the complaint. Thereafter, they submitted a motion for judgment on the pleadings

(Record document no. 41) which is currently pending before this Court. Lombardi responded in part by submitting a motion requesting leave to file an amended complaint and two proposed amended complaints. See Record document nos. 49 & 53. For the reasons outlined below, Plaintiff's motion to amend will be granted.

Discussion

Federal Rule of Civil Procedure 15(a) provides:

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

It is initially noted that Plaintiff has not previously submitted an amended complaint and the remaining Federal Defendants' answer constitutes a responsive pleading. Consequently, under the standards announced in Rule 15(a), the Plaintiff clearly requires leave of Court in order to file an amended complaint.

Second, it is well settled that pro se parties are accorded substantial

deference and liberality in federal court. Haines v. Kerner, 404 U.S. 519 (1972); Hughes v. Rowe, 449 U.S. 5 (1980). The United States Supreme Court has also recognized that Rule 15 has a liberal amendment of complaint policy. Foman v. Davis, 371 U.S. 178, 181-82 (1962). In the present case, since Lombardi has submitted two proposed amended complaints regarding his surviving claims, the Court will deem the initially filed proposed amended complaint as being withdrawn.

This action was initiated on February 10, 2005 and two (2) dispositive motions have already been filed and addressed. The remaining Federal Defendants have filed a motion for judgment on the pleadings which asserts that the factual averments set forth in the original complaint regarding Plaintiff's surviving claims are constitutionally deficient.

The advanced stage of this litigation and prior submission of dispositive motions are a matter of concern. However, the plaintiff's most recently filed proposed amended complaint only regards the surviving claims against the remaining Federal Defendants. It clearly contains new factual assertions relating to those surviving claims. Based on those factors, the *pro se* Plaintiff's request to file an amended complaint will be granted. Lombardi's most recent proposed

amended complaint (Record document no. 53) will be accepted.

Based upon the Court's ruling herein, the remaining Federal Defendants' motion for judgment on the pleadings will be dismissed without prejudice on the basis of mootness. Consequently,

IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion requesting leave to file an amended complaint (Record document no. 49) is GRANTED.
2. The Plaintiff's amended complaint (Record document no. 53) is accepted.
3. The remaining Federal Defendants' motion for judgment on the pleadings (Record document no. 41) is DISMISSED without prejudice on the basis of mootness.
4. Within twenty (20) days of the date of this Order, the

remaining Federal Defendants may file a response to the
amended complaint.

s/ James F. McClure, Jr.

JAMES F. McCLURE, JR.

United States District Judge